

OMB No.

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**Building Loan Agreement****U.S. Department of Housing  
Development  
Office of Housing**

Project #  
Project Name:

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ with an office and place of business in, \_\_\_\_\_ County of \_\_\_\_\_ and State of \_\_\_\_\_ (hereinafter called the "Borrower" which shall mean "Mortgagor" as that term is used in the National Housing Act), and \_\_\_\_\_ a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, having an office and place of business at \_\_\_\_\_ [City] [County] of \_\_\_\_\_ and State of \_\_\_\_\_ (hereinafter called the "Lender", which shall mean "Mortgagee" as that term is used in the National Housing Act).

WHEREAS, the Borrower, as the owner in fee simple of, or the owner of the leasehold estate in the property (hereinafter called the "Property") described in Exhibit "A" attached to the Deed of Trust, Mortgage or other security instrument (hereinafter called the "Mortgage"), which Exhibit "A" is attached hereto and incorporated herein by reference, has obtained a commitment from the Lender for a Mortgage Loan of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ .00) to aid the Borrower in the construction or rehabilitation on said property of a Project identified as Project No. \_\_\_\_\_ - \_\_\_\_\_ (hereinafter in accordance with Drawings and Specifications hereinafter referred to, and

WHEREAS, the Borrower understands that the Lender has received a commitment from the U.S. Department of Housing and Urban Development (hereinafter called "HUD") for insurance of said Mortgage Loan under the provisions of the National Housing Act as amended and intends upon execution of the hereinafter mentioned Note and Mortgage to have the Note endorsed for insurance by HUD. HUD is not making the Mortgage Loan.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set out and of other valuable consideration, the receipt of which is hereby acknowledged, the undersigned agree as follows:

(1) The Lender shall make and the Borrower shall take a Mortgage Loan in the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ .00), to be advanced as hereinafter provided, and to bear interest from the date of each advance at the rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum. The Mortgage Loan shall be evidenced by a credit instrument (hereinafter called the "Note") dated \_\_\_\_\_ 20\_\_\_\_, shall be payable in monthly installments, and shall have a maturity date of \_\_\_\_\_, 20\_\_\_\_. The Note shall be executed by the Lender and payable to the Lender, or order, and shall be secured by Mortgage, of even date, on the property described in the Mortgage. The Mortgage shall constitute a valid first lien on said property and the improvements to be erected thereon, and the only lien thereon except for liens for taxes and assessments not yet payable and other liens acceptable to the Lender and HUD. The Lender shall not advance any Mortgage Loan funds until the Borrower and Lender have submitted to HUD documents required by this Agreement and the HUD Commitment to Insure Advances, and have completed the initial loan closing.

(2) The Borrower shall complete on the Property, by \_\_\_\_\_ 20\_\_\_\_, a Project in accordance with Drawings and Specifications filed with HUD and designated HUD Project No. \_\_\_\_\_, dated \_\_\_\_\_, last revised \_\_\_\_\_. Such Drawings and Specifications, which include General Conditions of the Contract for Construction, AIA Document A201-1997 and the Supplementary Conditions of the Contract for Construction, form HUD 92554, have been initialed by the Borrower, the Design Architect, the Architect administering the Construction Contract (hereinafter called the "Architect"), the Contractor and, if applicable, the Contractor's Surety.

(3) Changes in the Drawings and Specifications, or changes by altering or adding to the work contemplated, or orders for extra work must have the prior written approval of the Architect. In addition, any such change or order may be effected only with the prior written approval of the Lender and HUD and under such conditions as either the Lender or HUD may establish.

(4) (a) The Borrower shall make monthly applications on Form HUD No. 92403 for advances of mortgage proceeds from the Lender. Applications for advances with respect to construction items shall be for amounts equal to (i) the total value of classes of the work acceptably completed; plus (ii) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; less (iii) 10 percent (holdback) and less prior advances. The "values" of both (i) and (ii) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgagor's Cost Breakdown", attached to the Construction Contract and made a part hereof. Each application shall be filed at least 15 days before the date the advance is desired, and the Borrower shall be entitled thereon only to such amount as may be approved by the Lender and HUD.

(b) Upon completion of the improvements, including all landscape requirements and off-site utilities and streets, the Borrower shall furnish to the Lender and HUD satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; and that all requisite certificates of occupancy and other approvals to own and operate the Project have been issued. The balance due the

Borrower hereunder shall be payable at such time after completion as HUD authorizes the release of the holdback. However, the Lender may withhold final payment until after the expiration of any period which mechanics and materialmen may have for filing liens.

(c) The Borrower agrees that funds in the amount of \$ \_\_\_\_\_ required for the completion of the Project over and above the proceeds of the Mortgage Loan, which have been deposited with the Lender for that purpose, shall be advanced by the Lender prior to the advance of any proceeds of the Mortgage Loan. In the alternative, Borrower agrees that said funds shall be advanced by the Lender as set forth in the disbursement agreement dated \_\_\_\_\_, 20\_\_\_\_, approved by the Lender and HUD, to accommodate the pro rata disbursement from multiple governmental funding sources or from low income tax credits [or historic tax credits] identified therein.

(d) The Borrower covenants that it will hold in trust each advance hereunder for application to the items for which such advance was requested and approved.

(e) The Borrower agrees that the Mortgage Loan shall at all times remain in balance. The Lender shall, in accordance with the provisions of this Agreement, continue to advance to the Borrower funds out of the proceeds of the Mortgage Loan upon insurance thereof by HUD, as long as the Mortgage Loan remains in balance and the Borrower is not in default hereunder or under the Note or Mortgage. The Mortgage Loan shall be deemed to be in balance only when the undistributed proceeds of the Mortgage Loan (after provision for reserves, fees, expenses and other deposits required by the Lender or HUD) equal or exceed the amount necessary (based on HUD's estimate of the cost of construction) to pay for all work completed and all materials delivered, for which payment has not been made, and the cost of completing construction of the Project in accordance with the Drawings and Specifications.

(5) The Lender shall advance to the Borrower out of the funds referred to in (4)(c) above, or out of the proceeds of the Mortgage Loan, amounts for application to the charges or items enumerated below, but only to the extent that such charges have accrued, or that the Borrower is otherwise entitled to payment on account of such items.

(a) Interest during construction	\$ _____
(b) Real estate taxes during construction	\$ _____
(c) Insurance during construction	\$ _____
(d) FHA mortgage insurance premium	\$ _____
(e) FHA examination fee	\$ _____
(f) Initial service charge	\$ _____
(g) Title and recording expense	\$ _____
(h) Inspection fee	\$ _____
(i) Legal	\$ _____
(j) Organizational and audit	\$ _____
(k) Permanent Loan Fee	\$ _____

TOTAL MAXIMUM ADVANCE (Line 45 of HUD-2283 Financial Requirements for Closing) \$ \_\_\_\_\_

(6) The Borrower shall cause either this instrument, waiver of liens or the construction contract under which the improvements are to be erected to be filed in the

public records, if the effect thereof will be to relieve the mortgaged property from mechanics' and materialmen's liens. Before any advance hereunder, the Lender may require the Borrower to obtain from the contractor and all subcontractors and materialmen dealing directly with the principal contractor acknowledgments of payment and releases of lien down to the date covered by the last advance, and concurrently with the final payment for the entire Project. Such acknowledgments and releases shall be in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the Project.

(7) The Borrower shall, as a condition precedent to the first advance hereunder, furnish the Lender with a signed, sealed and certified, current survey of the mortgaged property and a Lender's title policy (or other evidence of title) in form, substance and amount satisfactory to the Lender and HUD. Said policy (or other title evidence) shall be extended so as to cover each and every advance of said Mortgage Loan at the time of payment thereof and shall show no mechanics' or materialmen's liens against the mortgaged property. The Borrower shall furnish duplicate originals of said survey and title policy (or title evidence) to HUD.

(8) The Borrower agrees that said Project shall be constructed strictly in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regulatory authorities, and any rating or inspection organization, bureau, association or office having jurisdiction. The Borrower further agrees that said Project shall be constructed entirely on the aforesaid property and will not encroach upon any easement or right-of-way, or the land of others; and that the buildings when erected shall be wholly within the building restriction lines however established, and will not violate applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations. The Borrower shall furnish from time to time such evidence with respect thereto as may be required by the Lender or HUD and, upon completion of construction, shall furnish a survey, signed, sealed and certified by a registered surveyor, which shows the Project to be entirely on said property and to be free from any such violations.

(9) If the Borrower at any time prior to the completion of the Project abandons the same or ceases work thereon for a period of more than 20 days, or fails to complete the erection of the Project substantially in accordance with the Drawings and Specifications, or makes changes in the Drawings and Specifications without first securing the written approval required by paragraph 3 hereof, or otherwise fails to comply with the terms hereof, any such failure shall be a default hereunder, and the Lender, at its option, may terminate this Agreement. If the Lender so elects to terminate this Agreement, it may use and apply any funds deposited with it by the Borrower, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as HUD may prescribe. If the Lender elects not to terminate this Agreement, it may enter into possession of the premises and perform any and all work and labor necessary to complete the improvements substantially according to the Drawings and Specifications, and employ watchmen to protect the premises from injury. All sums so expended by the Lender shall be deemed to have been paid to the Borrower and secured by the Mortgage. For this purpose the Borrower hereby constitutes and appoints the Lender its true and lawful attorney-in-fact, with full power of substitution in the premises, to complete the Project in the name of the Borrower. The Borrower hereby empowers said attorney as follows: (a) to use any funds of the Borrower, including any balance which may be held in escrow and any funds which may remain unadvanced hereunder for the

purpose of completing the Project in the manner called for by the Drawings and Specifications; (b) to make such additions, changes and corrections in the Drawings and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Drawings and Specifications; (c) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (d) to pay, settle or compromise all existing bills and claims which may be liens against the mortgaged property, or as may be necessary or desirable for the completion of the Project, or for clearance of title; (e) to execute all applications and certificates in the name of the Borrower which may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the mortgaged premises or the construction of the Project and to take such action and require such performance as it deems necessary under the accepted guaranty of completion; and (g) to do any and every act which the Borrower might do in its own behalf. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. The Borrower hereby assigns and quitclaims to the Lender all sums unadvanced under the Mortgage and all sums held by the Lender in escrow conditioned upon the use of said sums for the completion of the Project, such assignment to become effective only in case of a default by the Borrower.

(10) The Borrower shall provide or cause to be provided workers compensation insurance and public liability and other insurance required by applicable law or by the general conditions included in the Specifications. The Borrower further agrees to purchase and maintain fire insurance and extended coverage on the mortgaged property. All such policies shall be issued by companies approved by the Lender and shall be in form and amounts satisfactory to the Lender and HUD. Such policies shall be endorsed with standard mortgagee clauses making loss payable to the Lender or its assigns; and may be endorsed to make loss during construction payable to the Contractor, as interest may appear. The originals of such policies shall be deposited with the Lender.

(11) The Lender and its agents and HUD and its agents shall, at all times during construction, have the right of entry and free access to the Project and the right to inspect all work done, and materials, equipment, building components and fixtures furnished, installed or stored either on or off the Project property, and to inspect all books, subcontracts and records of the Borrower.

(12) The Borrower shall execute and deliver to the Lender, a security agreement and financing statements, or other similar instrument, covering all property of any kind whatsoever purchased with mortgage proceeds and concerning which there may be any doubt as to such property's being subject to the lien of the Mortgage under the laws of the state in which the Project is situated.

(13) The Borrower shall furnish to the Lender assurance of completion of the Project in the form specified by the Secretary. Such assurance of completion shall run to the Lender as obligee and shall contain a provision granting to the Lender the authority to assign all rights thereunder to HUD.

(14) (a) The Borrower understands that the wages to be paid laborers and mechanics employed in the construction of the Project are required by the provisions of Section 212(a) of the National Housing Act, as amended, to be not less than the wages prevailing in the locality in which the work will be performed for corresponding classes of

laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act and as published in the applicable prevailing wage determination. The Borrower hereby states that it has read the determination by the Secretary of Labor and is fully familiar with the same.

(b) The Borrower shall, as a condition precedent to any advance hereunder, submit to the Lender (i) with each application for advance prior to the final application, certifications, in form approved by HUD, that all laborers and mechanics employed in the construction of the Project whose work is covered by that or any previous application and who have been paid in whole or in part on account of said employment, have been paid at rates not less than those contained in the applicable prevailing wage determination; and (ii) with the final application for advance, certifications in form satisfactory to HUD, that the Project has been fully constructed in accordance with the provisions of this Agreement and that all laborers and mechanics employed in the construction of the Project have been paid not less than the said prevailing wage rates. The applicable prevailing wage determination shall be construed to include every amendment to or modification of the determination which may be published prior to the beginning of construction or date the Mortgage is initially endorsed for insurance, whichever occurs first; provided, that if construction has not begun within 90 days after initial endorsement, the applicable prevailing determination shall include any modification of the determination which may be published prior to the beginning of construction.

(c) The Borrower agrees that should any advances hereunder be ineligible for insurance under the National Housing Act by reason of (i) the nonpayment of the said prevailing wage rates, or (ii) violation of any of the applicable labor standards provisions of the Regulations of the Secretary of Labor, the Lender may withhold from the Borrower all payments or advances payable to the Borrower hereunder until the Borrower establishes to the satisfaction of HUD that all laborers and mechanics or other persons employed in the construction of the Project have been paid said prevailing wage rates and that such violation of the said Labor Standards provisions no longer exists. The written statement of any officer of HUD or authorized agent of HUD declining to insure any advance of funds hereunder by reason of such nonpayment or violation shall be deemed conclusive proof that such advances are ineligible for mortgage insurance.

(d) In accordance with Article 1 of the Supplementary Conditions of the Contract for Construction, the Borrower shall insert the labor standards provisions thereof in any contract made for the construction of the Project, or any part thereof, and shall require the Contractor to insert similar provisions in each subcontract relating to the construction of the Project.

(15) The Lender and the Borrower agree that the Mortgage Loan shall be reduced by any amount required by the Agreement and Certification (form HUD No. 93305) between the parties hereto and HUD, which Agreement and Certification is incorporated herein by reference to the same extent as if set forth herein at length.

(16) The Borrower shall furnish such records, papers and documents relating to the Project as the Lender or HUD may reasonably require from time to time.

(17) The Borrower shall not transfer, assign or pledge any right or interest in, or title to, any funds deposited by the Borrower with the Lender, or reserved by the Lender for the Borrower, without the prior written approval of the Lender and HUD.

(18) As used in this instrument, the term "Lender" shall be deemed to include any person to whom the Note and Mortgage referred to above shall be assigned with the

knowledge and consent of HUD. This instrument shall be binding upon the parties hereto and their respective successors and assigns.

(19) The Borrower and each of its principals, \_\_\_\_\_, shall be personally liable to the Lender and or HUD for any advances that are not applied or used in accordance with this Agreement.

(20) HUD is not a party to this Agreement and has no obligation to the Borrower or Lender pursuant to this Agreement. HUD, pursuant to the mortgage insurance contract, has reserved in this Agreement the right to approve or disapprove certain actions to protect the mortgage insurance fund.

[Borrower's Name]

[seal & witness signature if required by law or practice]

\_\_\_\_\_

By: \_\_\_\_\_  
[title & capacity]

[Lender's Name]

[seal & witness signature if required by law or practice]

\_\_\_\_\_

By: \_\_\_\_\_  
[title & capacity]

Attachment: Exhibit A